

**UNITED STATES DEPARTMENT OF COMMERCE****United States Patent and Trademark Office**

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
10/224,929	10/22/00	JOHN M. WILSON	

10/224,929
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XW247/0810

EXAMINER

BANKS, HAROLD, JR.

ART UNIT	PAPER NUMBER
2682	5

DATE MAILED:

03/21/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

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Commissioner of Patents and Trademarks*Regards,**M.D. Banks-Harold
(703) 305-4379*

Office Action Summary

Application No. 09/595,557	Applicant(s) DIXON
Examiner Marsha D. Banks-Harold	Art Unit 2682

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 5/25/01 and 5/29/01

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-25 is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) 1-20 is/are allowed.

6) Claim(s) 21-25 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are objected to by the Examiner.

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) All b) Some* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15) Notice of References Cited (PTO-892) 18) Interview Summary (PTO-413) Paper No(s). _____

16) Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) Notice of Informal Patent Application (PTO-152)

17) Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 20) Other: _____

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DETAILED ACTION

Reissue Applications

1. The original patent, or an affidavit or declaration as to loss or inaccessibility of the original patent, must be received before this reissue application can be allowed. See 37 CFR 1.178.

2. *Claims 21-25* are rejected under 35 U.S.C. 251 as being improperly broadened in a reissue application made and sworn to by the assignee and not the patentee. A claim is broader in scope than the original claims if it contains within its scope any conceivable product or process which would have infringed the original patent. A claim is broadened if it is broader in any one respect even though it may be narrower in other respects.

The reissue claims 21-23 are broad or broader than the canceled or amended claim in all aspects, the recapture rule bars the claim since the subject matter relating to the details of the first and second frequencies as well as the second code has been canceled.

The claims 24-25 are broad or broader than the canceled or amended claim in all aspects, the recapture rule bars the claim since the subject matter relating to the details of the first and second codes has been canceled.

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Response to Arguments

3. Applicant's arguments filed 5/25/01 and 5/29/01 have been fully considered but they are not persuasive.

According to 35 U.S.C. 251, a patent may be reissued based on the surrendering of the original patent in addition to the payment of the fee, since applicant has failed to surrender the patent, the rejection is maintained.

The examiner further maintains that the newly added limitations were presented for the purpose of placing the application in condition for allowance, deletion of the limitations would be presumed to be a broadening in an aspect of the reissue claims related to the surrendered subject matter.

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Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Any response to this office action should be mailed to:

Commissioner of Patents and Trademarks
Washington, D.C. 20231

or faxed to:

(703) 305-9051, (for formal communications intended for entry)

Or:

(703) 305-9508 (for informal or draft communications, please label
"PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park 11, 2021 Crystal Drive, Arlington, VA., Sixth Floor (Receptionist).

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6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marsha D. Banks-Harold whose telephone number is (703) 305-4379. The examiner can normally be reached on Monday through Thursday (first week of bi-week) and Monday through Friday (second week of bi-week) from 6:30 a.m. to 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vivian Chang, can be reached on (703) 308-6739. The fax phone number for this Group is (703) 305-9508.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-4700.

Marsha D. Banks-Harold
MARSHA D. BANKS-HAROLD
PRIMARY EXAMINER

MDB-H/mdB-h
August 13, 2001